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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 In re:

10 LEE J. GASKILL and KIMBERLY C.
11 GASKILL,

12 Debtors.

13 VICTORIA A. STEINBACK,

14 Plaintiff,

15 v.

16 LEE J. GASKILL, KIMBERLY C.
17 GASKILL, and the martial community
18 composed thereof,

19 Defendants.

CASE NO. C09-5717BHS

Bankruptcy Appeal
No. 09-42871PBS

ORDER DENYING
PLAINTIFF'S MOTION
FOR WITHDRAWAL OF
REFERENCE

20 This matter comes before the Court on Plaintiff's Motion for Withdrawal of
21 Reference (Dkt. 1). The Court has considered the pleadings filed in support of and in
22 opposition to the motion and the remainder of the file and hereby denies the motion for
23 the reasons stated herein.

24 **I. FACTUAL AND PROCEDURAL BACKGROUND**

25 On March 4, 2008, Plaintiff Victoria Steinback filed a state court action against
26 Defendants Lee and Kimberly Gaskill, seeking damages for breach of fiduciary duty,
27 infliction of emotional distress, conversion, negligence, and unjust enrichment.
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1 On April 27, 2009, Defendants filed a Chapter 7 bankruptcy petition. *See In re*
2 *Gaskill*, Cause No. 09-42871PBS, United States Bankruptcy Court, Western District of
3 Washington, Dkt. 1.

4 On August 3, 2009, Plaintiff filed a Complaint to Determine Dischargeability of
5 Debt, seeking a dischargeability determination pursuant to 11 U.S.C. § 523(a)(4) and 11
6 U.S.C. § 523(a)(6). *See Steinback v. Gaskill*, Cause No. 09-4119PBS, United States
7 Bankruptcy Court, Western District of Washington, Dkt. 1. In that complaint, Plaintiff
8 asserted intentional tort claims. *Id.*, ¶¶ 7.1-7.20.

9 On October 10, 2009, Plaintiffs filed a Motion for Withdrawal of Reference (*Id.*,
10 Dkt. 14), which the clerk opened as the instant matter, Cause No. C09-5717BHS. *See*
11 Dkt. 1. On November 18, 2009, Defendants responded. Dkt. 1-4. On November 25,
12 2009, Plaintiff replied. Dkt. 2.

13 II. DISCUSSION

14 The district court has referred to the bankruptcy judges “all cases under Title 11,
15 and all proceedings arising under Title 11 or arising in or related to cases under Title 11.”
16 Local Rule GR 7, 1.01. Bankruptcy judges “may hear and determine . . . all core
17 proceedings arising under title 11,” which includes “determinations as to the
18 dischargeability of particular debts.” 28 U.S.C. § 157(b)(2)(I). A debtor may not be
19 discharged from any debt “for willful and malicious injury by the debtor to another entity
20 or to the property of another entity.” 11 U.S.C. § 523(a)(6).

21 In this case, Plaintiff argues that the reference of her matter to the bankruptcy court
22 should be withdrawn because a substantial part of her nondischargability complaint is
23 based on the allegation of an intentional tort. Dkt. 1 at 9. While Plaintiff provides the
24 Court with several authorities for the proposition that a bankruptcy court is without
25 jurisdiction to hear the merits of an intentional tort action, Plaintiff has failed to provide
26 the Court with an authority for the proposition that the merits of the intentional tort must
27 be adjudicated before a dischargeability ruling may be entered. Moreover, Plaintiff has
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1 failed to show that the bankruptcy court is unable to enter a dischargability ruling in the
2 instant adversarial proceeding. Therefore, Plaintiff's argument, that the inclusion of an
3 intentional tort in a nondischargability complaint mandates the withdrawal of a
4 bankruptcy reference, is unavailing.

5 In the alternative, Plaintiff argues that the Court has discretion to withdraw any
6 referred matter. Dkt. 2 at 5-7. Although the Ninth Circuit has not enumerated the factors
7 to consider when determining whether "cause" has been shown to withdraw a reference,
8 "other circuits are in 'substantial agreement on the factors that should be weighed in
9 considering a discretionary withdrawal of reference.'" *Vieira v. AGM, II, LLC*, 366 B.R.
10 532, 537-538 (D.S.C. 2007) (quoting *In re U.S. Airways Group, Inc.*, 296 B.R. 673, 681
11 (E.D.Va. 2003)).

12 These factors include: (i) whether the proceeding is core or non-core, (ii)
13 the uniform administration of bankruptcy proceedings, (iii) expediting the
14 bankruptcy process and promoting judicial economy, (iv) the efficient use
of debtors' and creditors' resources, (v) the reduction of forum shopping,
and (vi) the preservation of the right to a jury trial.

15 *Vieira*, 366 B.R. at 538. The Court finds that none of these factors weigh in favor of
16 withdrawing the reference of Plaintiff's nondischargability complaint. Therefore, the
17 Court denies Plaintiff's request for a discretionary withdrawal.

18 **III. ORDER**

19 Therefore, it is hereby

20 **ORDERED** that Plaintiff's Motion for Withdrawal of Reference (Dkt. 1) is
21 **DENIED** and this bankruptcy withdrawal matter is **DISMISSED**.

22 DATED this 12th day of January, 2010.

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25 BENJAMIN H. SETTLE
United States District Judge
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